

**PUBLIC HEALTH: health information for reporting, surveillance, epidemiology purposes.**

*Recommendations for acceptable and unacceptable data use policies*

**Discussion Question(s)**

1. How important is it for providers to be able to disclose identifiable health care information for public health purposes without patient consent?

**Assumptions**

1. Health care providers will continue reporting conditions currently classified as “mandatory reporting” or “discretionary reporting” events, diseases, and situations under Wisconsin law to statutorily identified public health entities (e.g., the State Health Department).<sup>1</sup>
2. The state health department will retain statutory authority to:
  - a. Investigate the cause and circumstances of any special or unusual disease or mortality (Wis. Stat. 250.04(1))
  - b. Establish Surveillance Systems to detect any occurrence of acute, communicable or chronic diseases and threat of occupational or environmental hazards, injuries or changes in the health of mothers and children. (Wis. Stat. 250.04(3)(a))
  - c. Analyze occurrences, trends and patterns of acute, communicable or chronic diseases, maternal and child health, injuries and occupational and environmental hazards and distribute information based on the analyses. (Wis. Stat. 250.04(3)(b)(1).
  - d. Operate a Public Health Data System (Wis. Stat. 250.04(3)2)
  - e. Conduct investigations, studies, experiments and research pertaining to any public health problems which are a cause or potential cause of morbidity or mortality. Individual questionnaires or surveys shall be treated as confidential patient health care records under ss. 146.81 to 146.835, but the information in those questionnaires and surveys may be released in statistical summaries. (Wis. Stat. 250.04(3)(b)(3))
  - f. Use hospital emergency room and inpatient health care records, abstracts of these records and information the state or federal government collects to correlate exposure to certain occupational and high risk environments with resulting acute or chronic health problems. (Wis. Stat. 250.04(3)(b)(4))

**Reccs: Using Electronically Released Health Information for Public Health Purposes**

1. Mechanisms that facilitate automatic (electronic) release of mandated and discretionary reporting conditions should be a high priority in the development of Wisconsin’s health information exchange.
2. Current controlling law (Wisconsin or HIPAA) should set the precedent for:
  - a. Which information can be released electronically for public health purposes
  - b. Which entities can receive this information
  - c. Which entities can receive identified (vs. de-identified) information and when.
3. (Additional recommendations to be added following group discussion)

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<sup>1</sup> See page 4 for events, diseases, and situations included under mandatory and discretionary reporting.

**Controlling Law (Wisconsin or HIPAA) – and Suggested Changes**

Note: For our 8/21 meeting, please be prepared to point out any areas in the grid below where you would like to recommend a law change as part of the eHealth Action plan.

		Identified Health Information for reporting, surveillance, and epidemiology <sup>2</sup>		
		Disclose without Consent <sup>3</sup>	Comments: Beyond Required Reporting	Sugg.Change (yes or no)
Type of health information	General health information	Yes	For disclosure of information beyond required reporting, disclose without patient consent to legally authorized state agency.	
	Mental health	Yes <i>required reporting</i>	For exchange of information beyond required reporting, disclose without patient consent to agency designated by DHFS with written documentation of authority for access per statute or authority of DHFS. Other information can be disclosed with patient consent only (opt-in).	
	Developmental disabilities	Yes <i>required reporting</i>		
	Alcohol/drug abuse treatment	Yes <i>required reporting</i>	For exchange of information beyond required reporting, disclose without patient consent to agency designated by DHFS with written documentation of authority for access per statute or authority of DHFS. Other information can be disclosed with patient consent only (opt-in).  If disclosure does not identify the patient as receiving alcohol and/or drug abuse treatment, communicable disease information may be reported to the appropriate state agency.  In the event that a public health investigation may be deemed a health oversight agency activity, limited information with documented assurance regarding patient privacy may be accessible.	
	Communicable disease	Yes <i>required reporting</i>	For additional access: Disclose general health information without patient consent to legally authorized state agency [146.82(2)(a)5.].  For Mental Health, Alcohol/Drug Abuse and Developmental Disability, disclose without patient consent to agency designated by DHFS with written documentation of authority for access per statute or authority of DHFS.  For HIV Test Results disclose without patient consent to the state epidemiologist or designee for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.	
	HIV test results	Yes <i>required reporting</i>	Disclose without patient consent to the state epidemiologist or designee for the purpose of providing epidemiologic surveillance or investigation or control of communicable disease.	
	Genetic testing	Yes <i>required reporting</i>	For additional exchange of information – see “General Information, Mental Health, Alcohol/Drug Abuse and Developmental Disability” categories. No specific state or federal law protection. Federal law pending.	
	Sexual assault	Yes <i>required reporting</i>	Disclose without patient consent for legally required reporting. For additional exchange of information – see “General Information, Mental Health, Alcohol/Drug Abuse and Developmental Disability” categories.	
	Domestic violence	Yes <i>required reporting</i>		
	Adoption	Yes <i>required reporting</i>		

<sup>2</sup> Protections apply to identified health information (de-identified not protected). Protections differ if information is used for treatment.

<sup>3</sup> Disclosure without consent is allowed through legal analysis vs. specific statutory consent. This differs from HIPAA and treatment.

### **Discussion**

1. Some members of the group suggested that analyzing de-identified health information to identify epidemiological needs and trends could improve health care.
2. Some group members expressed a belief that all health information (sensitive or general) should be exchanged without a patient's consent. This position was based largely on:
  - a. *HIPAA*. HIPAA allows exchange of all information; it does not protect "sensitive" information in this way. Suggesting a course of action that counters HIPAA may adversely impact the potential for national or cross-state information exchange.
  - b. *Quality of Care*. An exchange that is limited in the scope of information available may not give providers the information they need to assess patient health and provide treatment.

### **Considerations**

1. In general, disclosure without patient consent is allowed under a specific statutory exception. HIPAA has a specific statutory exception allowing disclosure for public health purposes without consent. Wisconsin state law does not have such a specific exception. Instead, it requires a legal analysis to allow disclosure for public health purposes (including mandatory reporting) without patient consent.

Wisconsin counties and organizations have policies and procedures in place to allow disclosure for public health purposes. However, the group may wish to consider recommending a policy change in this area to better mirror HIPAA.

(suggested policy changes will be placed here following group discussion)

APPENDIX A

**Under Wisconsin law, “mandatory reporting” events, diseases, and situations, include:**

- a. Deaths: Unusual circumstances, homicides, suicides, following an abortion, caused by poisoning, following accidents, no physician in attendance prior to 30 days, physician refuses to sign death certificate, when physician unavailable to sign death certificate (Wis. Stat. 979.01)
- b. Births: Birth and Developmental Abnormalities (Wis. Stat. 253.12)
- c. Induced Abortions (Wis. Stat. 69.186)
- d. Non-spousal Artificial Insemination: Husband’s consent (Wis. Stat. 891.40)
- e. Lead Poisoning: Requires reporting of diagnosis of lead poisoning or lead exposure, including any lead screening, regardless of result (Wis. Stat. 254.13(1))
- f. Communicable Diseases:

*Category I:* Anthrax, Botulism, Botulism, infant, Cholera, Diphtheria, Food-borne or water borne outbreaks, Haemophilus influenzae invasive disease, Hantavirus infection, Hepatitis, viral type A, Hepatitis E, Measles, Meningococcal disease, Pertussis, Plague, Poliomyelitis, Rabies (Human), Ricin toxin, Rubella (congenital syndrome), Smallpox, Tuberculosis, Yellow Fever

*Category II:* Amebiasis, Arboviral infection (encephalitis/meningitis), Babesiosis, Brucellosis, Campylobacteriosis (campylobacter infection), Cat scratch disease, Cryptosporiasis, Cyclosporiasis, erlichiosis, Encephalitis, viral (other than arboviral, E-coli and other enterohemorrhagic E-coli, Giardiasis, Hemolytic uremic syndrome, Hepatitis, viral types B, C, D, non-A, non-B (acute), Histoplasmosis, Kawasaki disease, Legionnaires’ disease. Leprosy, Leptospirosis, Listeriosis, Lyme disease, Malaria, Meningitis, viral, Meningitis, bacterial, Mumps, Nontuberculous mycobacterial disease, Psittacosis, Q fever, Reye’s syndrome, Rheumatic fever, Rocky mountain spotted fever, Salmonellosis, Sexually transmitted diseases, Shigellosis, Streptococcal disease, streptococcus pneumoniae invasive disease, Tetanus, Toxic shock syndrome, Toxic substance related disease, Toxoplasmosis, Trichinosis, Tularemia, Typhoid fever, Typhus fever, Varicella, Yersiniosis, suspected outbreaks of other acute or occupationally related diseases

*Category III:* Acquired immune deficiency syndrome (AIDS), Human Immunodeficiency virus (HIV) infection, CD4+T-lymphocyte count

- g. Sexually transmitted Diseases (see letter f above)
- h. Child Abuse (Wis. Stat. 48.981)
- i. Psychotherapist misconduct with a patient (Wis. Stats. 940.22)
- j. Cancer (Wis. Stats. 255.04)
- k. Infant Drug or Alcohol Screens (Wis. Stat. 146.0255)
- l. Crime injuries, Gunshot wounds, Burns (Wis. Stats 146.995, 146.995(2)(a)3)

**Under Wisconsin law, “discretionary reporting” events, diseases, and situations, include:**

- g. Unsafe Drivers (Wis. Stat. 146.82(3)(a))
- h. Elderly abuse (Wis. Stat. 46.90)